No. 2810

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

EDWARD WHITE, Commissioner of Immigration at the Port of San Francisco, *Appellant,*

vs.

WONG QUEN LUCK, *Appellee.*

GOVERNMENT'S BRIEF

Upon Appeal from the United States District Court for the Northern District of California, First Division.

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,
Attorneys for Appellant.

Filed this.....day of February, 1917.

FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.

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Statement of Facts

The appellee, Wong Quen Luck, claims to be the son of Wong Shoon Jung, who is a citizen of the United States. Appellee is sixteen years of age, came to the United States from China on the Steamship "Korea," June 21, 1915, and made an application to enter the United States as a son of a citizen. After a careful hearing of said application, the Secretary of Labor held that the "relationship claimed" was not established and deportation was ordered.

Specification of Errors

I.

That the Court erred in granting the writ of habeas corpus and discharging the alien, Wong Quen Luck, from the custody of Edward White, the said Commissioner of Immigration.

II.

That the Court erred in holding that if had jurisdiction to issue a writ of habeas corpus in the above entitled cause, as prayed for in the said petition.

III.

That the Court erred in holding that the allegations contained in said petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of the writ of habeas corpus.

IV.

That the Court erred in finding that the evidence upon which the Secretary of Labor issued the warrant of deportation for the said Wong Quen Luck was insufficient to justify deportation of the said Wong Quen Luck.

V.

That the Court erred in holding that the evidence as presented in said petition for a writ of habeas corpus and the return thereto, together with all of the exhibits on file in the above entitled cause, was

insufficient to justify deportation and in permitting said Wong Quen Luck to appear before the Court and give testimony in which the said Wong Quen Luck endeavored to explain the discrepancies which appeared in the testimony given by him and his alleged father upon the hearing had before the Immigration officers at Angel Island.

* * * *

Although there are several specifications of errors, they all relate to practically the same question, and in fact, there seems to be one material question to be determined in this case, and that is whether the Court erred in holding that the facts presented in the Government's return (which included all of the evidence upon which the order of deportation was based) justified the said Court in finding that the conclusions, orders made, and proceedings had, were manifestly unfair, or that the action taken by the Immigration officers was such as to prevent a fair investigation, or that there was a manifest abuse of discretion on the part of said Immigration officials.

It was necessary for the lower Court to find that there was unfairness or an abuse of discretion on the part of the Immigration officials before it permitted said appellee to attack the proceedings of the Immigration officials.

Low Wah Suey vs. *Backus,* 225 U. S. 460.

In this case Justice Day said:

> "A series of decisions in this Court has settled that such hearings before executive officers may

be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings, it must be shown that the proceedings were manifestly unfair, that the action of the executive officers was such as to prevent a fair investigation, or that there was a manifest abuse of discretion committed to them by the statute. In other cases, the order of the executive officers within the authority of the statute is final.

U. S. vs. *Ju Toy,* 198 U. S. 253, 49 L. Ed. 1040, 25 Sup. Ct. Rep. 644;

Chin Yow vs. *U. S.,* 208 U. S. 8, 52 L. Ed. 369, 28 Sup. Ct. Rep. 201;

Tang Tun vs. *Edsell,* 223 U. S. 673."

The burden of proof lies upon appellee to show that he was denied a fair opportunity to produce the evidence that he desired to produce or that a fair hearing was denied him by the Immigration officials before the lower Court has jurisdiction.

Chin Low vs. *U. S.,* 208 U. S. 8.

In this case Justice Holmes said:

"Of course if the writ is granted, the first issue to be tried is the truth of the allegations last mentioned (referring to the allegations set forth in the petition for a writ of habeas corpus). If the petitioner was not denied a fair opportunity to produce the evidence that he desired, or a fair, though summary hearing, the case can proceed no further. Those facts are the foundation of the jurisdiction of the District Court, if it has any jurisdiction at all. It must not be supposed that the mere allegation of the facts opens the merits of the case,

> whether those facts are proved or not. And, by way of caution, we may add that jurisdiction would not be established simply by proving that the Commissioner and the Department of Commerce and Labor did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced. But supposing that it could be shown to the satisfaction of the district judge that the petitioner had been allowed nothing but the semblance of a hearing, as we assume to be alleged, the question is, we repeat, whether habeas corpus may not be used to give the petitioner the hearing that he has been denied."

From this case it can readily be seen that the lower Court would have no jurisdiction over this case unless it can first be shown that the appellee was not given a fair hearing.

This case did not differ from the ordinary case, and the hearings were conducted in a fair and impartial manner. In fact, an exhaustive examination was made by the Immigration officials to ascertain whether the relationship of father and son existed. Appellee's petition (p. 5 Trans.) shows that "the said Commissioner granted and permitted new and further testimony to be submitted by said detained in support of said application for his admission to the United States."

There is an allegation on page 5 of the transcript as follows:

> "That, thereafter, as your petitioner is informed and believes, and therefore alleges the fact to be, the inspector who took said testi-

mony under the direction of said Commissioner, strongly recommended that the said Wong Quen Luck be admitted to the United States, and that he be permitted to reside therein, and that the said application for admission be granted, and said petitioner alleges upon information and belief that the said recommendations were so made for the reason that the said testimony so submitted clearly established the right of said detained person to enter the United States and reside therein."

Had counsel been properly informed concerning the facts of this case, he certainly would not have made such an allegation, for there was no such report in the record.

The only reports made show material discrepances and contain no such recommendation referred to by said petitioner. The reports are as follows:

On pages 19 and 20 of the record of the Bureau of Immigration, which is an exhibit in this case, Immigrant Inspector Harry B. Blee made the following report:

100/164 "Office of Immigrant Inspector
Port of San Bernardino, Cal.,
July 2, 1915.

Inspector in Charge,
Immigration Service,
Los Angeles, Cal.

Inclosed herewith find record of investigation, in quintuplicate, in the case of Wong Quen Luck, alleged son of Wong Shoon Jung, an alleged native. Wong Quen Luck arrived on S. S. Korea, June 21, 1915, at San Francisco, the San Francisco file being 14438/6-20, your

file 5551/96. Copy of habeas corpus proceedings in the case of the alleged father Wong Shoon Jung, is transmitted for use in the case, said copy bearing the No. 7580. Same should be returned when it has served its purpose. The attention of the San Francisco office should be invited to the fact that the alleged father in this case and the identifying witness Wong Ben Jew both gave testimony, which has a bearing on this case, in the case of Wong Ho Lung ex S. S. Siberia, Nov. 9, 1914, who holds certificate of identity No. 17645. San Francisco file No. 13905/19-12 covers the admission of Wong Ho Lung. I hunted up Wong Ho Lung and took a statement from him regarding the present applicant, though he was not mentioned as a witness in the case.

A number of discrepancies have developed in testimony, perhaps the most noticeable being with regard to the applicant's paternal grandfather whom he states he has never seen. Testimony of both the father and witness Wong Ben Jew is to the effect that the grandfather in question lived in the same house with applicant for years. Applicant states that his father owns no land in China. The father states that he does. Applicant states that Wong Daw Sai who lives in the home village has no boys. Both the father and the identifying witness testify that Wong Daw Sai has a son. Witness Wong Ben Jew says that he has visited applicant's home in China many times; that during the last trip he made to the home village in China he went to Wong Quen Luck's house, which was just across the street from his own. 'Many, many times. I cannot count how many times.' A few other minor discrepancies are also noted.

(Signed) Harry B. Blee,
Immigrant Inspector."

There was a second and supplemental report made after further testimony was taken, which will be found on page 22 of said Immigration record, and which reads as follows:

"SUPPLEMENTAL REPORT.

Office of the Commissioner,
14438/6-20 San Francisco, Cal, July 15, 1915.

Commissioner of Immigration,
Thro' Chinese Inspr. in Charge,
Angel Island, Cal.

In re Wong Quen Luck, Son of Native, Riverside, Cal., ex S. S. Korea, June 21, 1915:

Statement of the applicant was taken, and the case was forwarded to Riverside for further investigation; it is now returned to me for final report.

The case contains numerous material discrepancies:

Alleged father states that his father died ST-3-10 in his house in China, and that his father and mother had been living in his house ever since he was married. Applicant states that his paternal grandfather died CR-1; does not know where; that he never saw him, and that his mother told him about his grandfather's death.

Applicant states that the witness, Wong Bing Jew, came to his house and delivered some money in 1909, but he doesn't know how much. The witness states that he never at any time took any money to applicant's house, but that he had visited applicant's house many times. The applicant, however, contradicts the latter statement, saying that the witness only called at his house once. Alleged father states that he never sent any money home by the witness.

Applicant states that his father owns no land in China, while his alleged father states that he owns about two acres of rice land, in three pieces, and that his wife leases this land to other people.

There are other minor discrepancies in the testimony, but the foregoing, in my opinion, are sufficient to warrant denial of the applicant, and I so recommend.

(Signed) W. D. Heitmann,
WDH/PAM. Immigrant Inspector."

After the said investigation was made and the reports rendered, the Inspector of the law section prepared a memorandum, which is set forth on page 28 of said Immigration record for the use of the Commissioner of Immigration, and which is as follows:

No. 14438/6-20 "Office of the Commissioner
San Francisco, Cal, August 5, 1915.
Memorandum for the Commissioner.

In re Wong Quen Luck alleged son of merchant, ex S. S. 'Korea,' June 21, 1915.

The American nativity of the alleged father is satisfactorily established, he having been admitted as such at three different times, the second time from the essential trip, ex S. S. 'Gaelic,' May 20, 1899, and the last time No. 102, ex S. S. 'Korea,' October 9, 1909.

The examining inspector reports adversely in this case because of certain discrepancies contained in the testimony. One of said discrepancies, to my mind, is in itself sufficient to warrant denial. It will be noted that applicant remembers his father having been in China some eight or nine years ago, but does not remember

the exact date. The fact that alleged father actually was in China in 1909, and now states that his father died in ST-3 (1911), he having received a letter to that effect from his wife, and further states that his father and mother always lived in the same house ever since he married his wife, clearly shows that he is not the father of the present applicant, who testifies that he never saw his paternal grandfather and does not know where he died, but was told by his mother that he, the paternal grandfather, died in CR-1 (1912). He only changed his statement as to whom he received that information from, after having first stated that his father told him about his paternal grandfather's death and having had his attention called to the fact that he had stated his father had not been in China during the last eight or nine years.

The remaining discrepancies are also more or less serious and also tend to show more clearly that a fraudulent claim has been advanced in this case. As applicant has failed to satisfactorily establish the relationship claimed to his alleged father, denial is recommended in this case.

(Signed) Lauritz Lorenzen,
LL/LM Inspector, Law Section."

Following the said investigation and reports, all of the evidence, reports and proceedings in the case were incorporated into the said Immigration record on file herein and forwarded to the Bureau of Immigration at Washington, D. C., and there a memorandum was prepared for the Secretary of Labor, as follows:

"September 2, 1915.

In re appeal of Wong Quen Luck, alleged son of a native.

Memorandum for the Assistant Secretary:

This is the case of a Chinese boy of 16 who seeks admission to his alleged father, a 'court record' native. He has been denied because the following material discrepancies appear in his testimony and that of his alleged father and the witness:

1. The alleged father states (pp. 17-18) that his father lived with his (the alleged father's) family in China from the time of the latter's marriage until the former died in 1911, only four years ago; also that the paternal grandmother lived with him until her death in 1906. Applicant, however, testifies (p. 6) that he never saw his paternal grandfather, who died in 1912; that his mother told him of his grandfather's death; and that his paternal grandmother died 'over ten years ago in our house in China.' This discrepancy is regarded as particularly serious.

2. Applicant states (p. 6) that the alleged father was last in China 'eight or nine years ago, I (he) don't remember the date.' As a matter of fact, the alleged father last returned from China in 1909, only six years ago, when applicant would have been 10 years of age. He

should remember the visit of the alleged father distinctly under these circumstances.

3. Applicant testifies (p. 5) that alleged father owns no land in China, whereas the alleged father states (pp. 15-16) that he owns two acres in three pieces and that it is rented out by his wife.

4. Applicant states that one of his next-door neighbors has two girls and no boys (p. 5). The alleged father testified (p. 16) that his neighbor has 'two or three girls' and two sons, and the witness states (p. 13) that his neighbor has two or three girls and one son.

There are other discrepancies, some of a similar nature and others of less importance. The principals and witnesses, of course, agree on many points, but the Bureau is of the opinion that the failure to agree on the material matters referred to above arouse so grave a doubt as to the *bona fides* of the case as to justify no action other than exclusion. It is accordingly recommended that the decision of Commissioner Backus be affirmed and deportation directed.

For the Commissioner-General,
A. Warner Parker,
Law Officer."

After a careful consideration of the said memorandum and record, the order of deportation was affirmed by Assistant Secretary Louis F. Post in the following language:

"Department of Labor.
54005/52 Sept. 14, 1915.

In re Wong Quen Luck.

The conflict between applicant and his father as to applicant's grandfather appears upon the

record too clearly to be accounted for by misapprehension or mistranslation or in any other way than as evidence that the applicant was not a member of his alleged father's household, and therefore (considering the other facts) not his alleged father's son. According to applicant he was a member of the household but had never seen his grandfather, although, according to the alleged father (p. 17) the grandfather had lived in the same house with applicant from the time of the father's marriage until the grandfather's death, when applicant was 10 or 12 years old. Appeal dismissed.

(Signed) Louis F. Post,
Asst. Secy."

There was not a scratch of testimony in the record that would indicate unfairness or an abuse of discretion on the part of the Immigration officials and in the absence of such a showing, their findings and conclusions are final and conclusive.

Tang Tun vs. *Edsell,* 223 U. S. 673;

Low Wah Suey vs. *Backus,* 225 U. S. 460;

U. S. vs. *Ju Toy,* 198 U. S. 253;

Chin Yow vs. *U. S.,* 208 U. S. 8;

Zakonaite vs. *Wolf,* 226 U. S. 272;

Healy vs. *Backus,* 221 Fed. 358-364.

In this case the said certified record of the Bureau of Immigration was filed and made a part of the petition for the writ of habeas corpus upon the hearing of the demurrer. This record was later incorporated into and made a part of the Govern-

ment's return, so the lower Court had all of the proceedings before it, and the Government contends that these proceedings failed to show unfairness or an abuse of discretion on the part of the Immigration officials.

It is true that appellee *contends* that the discrepancies set out in said Immigration record and upon which the order of deportation was based were "due to the fact that the official interpreter who acted for the Immigration officials at the time that the testimony of said applicant was taken spoke a different dialect from that spoken by said detained," but in answer to this contention the Government calls attention to the fact that no such objection was ever made on the part of appellee during the hearings before the Immigration officials, although said appellee had C. L. Bouve, one of the most learned and eminent Immigration lawyers in the United States, employed. Furthermore, the examination of said appellee, as set out on page 6 of the said Immigration record, shows conclusively that the appellee spoke the See Yip dialect, which was the original dialect of said interpreter.

If the Court were permitted to go beyond the Immigration record and to allow the alien to explain discrepancies, such procedure would result in a serious handicap to the Immigration officials and block our courts with litigation, for the Government cannot conceive of a case where it would not be possible for the alien to give some plausible excuse

for the discrepancies which appeared in the record after such alien had been permitted to see the record and learn what discrepancies appeared therein.

That the courts are not prepared to inquire into the sufficiency of probative facts or consider the reasons for the conclusions reached by the Immigration officials is well settled.

Lee Lung vs. *Patterson,* 186 U. S. 170;

Healy vs. *Backus,* 221 Fed. 358, 365;

White vs. *Gregory,* 213 Fed. 768.

In conclusion the Government takes the position that the record in this case shows that there was ample evidence to justify the order of deportation and that the Court erred in going beyond the record presented by the Immigration officials and permitting the appellee to explain discrepancies which the latter claims were due to the interpreter speaking a different dialect, when, as a matter of fact, the record does not support any such contention.

Respectfully submitted,

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